



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **MAN/OOCX/LSC/2019/0049**

**Property** : **Appleton Point 1 Hamm Strasse  
Bradford BD1 4NT**

**Applicant** : **E and J Ground Rents No 11 LLP**

**Respondent** : **Various (see list attached)**

**Type of Application** : **s27A Landlord and Tenant Act 1985**

**Tribunal Members** : **Mr John Murray LLBM  
Mrs Sally Kendall BSc MRICS**

**Determination Date** : **18 April 2020**

**Decision Date** : **11 May 2020**

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**DECISION**

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## **DECISION**

The Tribunal determines that the service charge on account for the year commencing 1<sup>st</sup> May 2019 for each residential unit is £3091.80.

## **INTRODUCTION**

1. The Applicant had applied to the Tribunal for a decision as to the reasonableness of service charges under s27A Landlord and Tenant Act 1985 and for dispensation with consultation required under s20C of the same Act, alongside an application for dispensation from consultation under s20ZA Landlord and Tenant Act 1987. The application was considered by the Tribunal on the 12 November 2019.
2. The Tribunal determined on 12 November 2019 that the budget was reasonable, but the Tribunal was unable to determine, in the absence of evidence or submissions shared with all parties (including the leaseholder of the car park) what proportions the service charges should be shared in between the car parking lease and the residential leases.
3. Further directions were made on the 22 January 2020 and in accordance with those directions the Applicant sent submissions to the Tribunal and the Respondents on 3<sup>rd</sup> February 2020.

## **THE PROCEEDINGS**

4. The Tribunal reconvened to consider the submissions and made a paper determination.

## **THE APPLICATION**

5. Appleton Point is described by the Applicant as a mixed used building comprising 160 self contained studio units used as student accommodation and a basement car park. There are two types of lease; 160 being residential and a further lease for car parking, which is not under the jurisdiction of this Tribunal.
6. The application made under s27A Landlord and Tenant Act 1985 was for a determination in relation to the service charges sought on account for the service charge year commencing 1st May 2019.

## THE RESIDENTIAL LEASES

7. The residential units are understood to have been originally let on residential leases between the Landlord, Mederco Limited, the Management Company, Appleton Point Management Limited and the individual lessees for a term of 999 years from 1 January 2014. A sample lease was provided for Room 0.01.
8. The Applicant Management Company is a third party to the lease. Pursuant to the lease the Respondents are or would become members of the Management Company.
9. The Respondents covenanted in the lease to pay 1/160 (or such other amount as the Landlord or Management Company, acting reasonably, deem appropriate) of the costs of the provision of the Services in Part 1 of the Seventh Schedule and payable in accordance with part 2 of the Fifth Schedule.
10. The Respondents covenanted to pay the insurance rent, being 1/160 (or such other amount as the Landlord, acting reasonably, deems appropriate) of the costs of the premium that the landlord expends and any other fee and other expenses that the Landlord incurs in effecting and maintaining insurance of the Building in accordance with the Sixth Schedule including professional fees for carrying out any insurance valuations.
11. Part 1 of the Seventh Schedule provides that the Management Company may renew and improve as and when necessary the structure of the Buildings on the Estate and makes provision for a number of other expenses specified.

## THE LAW

12. The relevant legislation is contained in s27A Landlord and Tenant Act 1985 which reads as follows:

s27A Liability to payable service charges: jurisdiction.

(1)An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to— .

- (a)the person by whom it is payable,
- (b)the person to whom it is payable,
- (c)the amount which is payable,

- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to— .

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and .
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant, .
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party, .
- (c) has been the subject of determination by a court, or .
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

## SUBMISSIONS

### THE APPLICANT

13. The Applicant had filed a statement of case dated 1 August 2019 explaining how they had taken over the provision of services from the Management Company in accordance with Clause 7 of the Sixth Schedule to the Lease and the Tribunal in its earlier determination was satisfied that they had correctly done so.
14. The Applicant's statement of case had set out calculations as to how they proposed to apportion the service charges and insurance premiums between the leaseholders of the car park, and the leaseholders of the residential accommodation.
15. The Applicant had emailed the Tribunal shortly before the hearing to express misgivings about the calculation they had provided. However as no evidence or submissions had been shared with all parties, the Tribunal determined it was unable to determine that the proposed service charge budget set for the year was reasonable.
16. In the original submissions, the Applicant had submitted that the terms of the residential leases and the car parking leases required leaseholders to contribute to all of the items of expenditure listed in the budget, which are by definition items of future expenditure.
17. They proposed that the leaseholders should pay in proportion to internal floor areas, which had been measured by Keith Davidson Partnership, the developer's architects, in the following proportions:
  - (a) Car Parking: 1400 m<sup>2</sup> (23.26%)
  - (b) Residential Units 4620m<sup>2</sup> (76.74%)
18. No objections had been made to these proposals by any of the Respondent leaseholders.
19. However having reflected on the position, and considered a determination by the Midlands Tribunal in the case of St. Crispins Court Stockwell Gate Mansfield (BIR/37UF/LSC/2018/0017) ("St. Crispins Court") they had asserted that it was inappropriate to apportion on the basis of measurement alone, as that did not adequately reflect the respective services used by car parks and residential accommodation.

20. The Tribunal in St. Crispin's Court weighted the service charge in proportions between residential areas, car park, and commercial units. The residential areas had to be maintained, lit and carpeted, and the mechanical and electrical services (including door entry, emergency lighting and fire protection systems) repaired and maintained. The lifts had to be maintained and serviced. There was a gate and entry system.
21. The Applicant distinguished Appleton Point, where the car parking is in an open area, underneath and alongside the building, and no lifts, gate or entry systems serve it. They asserted that the services which benefitted the car park would be minimal.
22. They proposed that service charges should be apportioned using schedules for the residential car parking and services according to their relative use of common amenities and services, resulting in budgeted expenditure being divided £473,306.54 to the residential accommodation, and £2897.46 to the car parking area.
23. For repairs, the Applicant proposed a contribution of £500 to general repairs and maintenance, as an estimate by the Managing Agents of the actual costs of repairs to those areas.
24. For other relevant heads of expenditure that they asserted were relevant to the car parking area, they divided them by 161 and determined that the car park should pay the same proportion as one flat.
25. For contributions to insurance, they proposed this should be apportioned using floor area, but also adopting weighting as applied in St. Crispin's Court. In their calculation set out in their submissions they stated that the weighting of the car park should be 1, and the residential areas 0.5; it was clear from their resulting calculations that this was a typing error and that the residential areas should have been weighted as 1, and the car park 0.5.

## **THE RESPONDENTS**

26. No further submissions were received from the Respondents.

## **THE DETERMINATION**

### **Service Charges S27A**

27. The Tribunal having already determined that the budget for service charges and insurance for the current accounting period is reasonable was required to determine the proportions that the leaseholders should pay towards those sums.

28. The Tribunal notes that the under the lease can determine (acting reasonably) an alternative amount to 1/160 of the service charges to be paid by each leaseholder.
29. The Tribunal has no jurisdiction to assess the service charges for the car park lease; however it must effectively do this to determine the reasonableness of the proportions sought from the residential leaseholders.
30. The Tribunal is not bound by the decision in St. Crispins Court but recognise it as useful guidance as an approach that might be taken.
31. The Tribunal determines that it is reasonable to apportion service charges, so far as possible according to the costs of services used by the particular aspect of the property, and that a car park with no electronic, or mechanical equipment, areas requiring cleaning or actual management will not incur cost based on its floor area as one of the flats which benefit from communal spaces requiring more services will do.
32. The Tribunal determines that £500 is a reasonable sum based on Managing Agents' estimates for general repairs and maintenance for the year for the car park.
33. The Tribunal determines in the absence of any further evidence or submissions that it is reasonable for the car park to pay 1/161 of the service charges for grounds maintenance, electricity, audit and accountancy fees, health and safety, management fees, staff wages and Reserves – External, and that the schedule appended to the Applicant's submissions reflected the costs that could properly be ascribed solely to the residential units.
34. The Tribunal determines that the insurance premium should be apportioned between the leaseholders based on floor area but that floor area should be weighted so that residential units are 1.00 and car parking spaces are 0.50 so that the premium will be split 86.84% to residential units and 13.16% to car park leases.

**Tribunal Judge  
John Murray**